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OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
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May 29, 2003

Bruce P. Beausejour
Vice President and General Counsel – New England
Verizon Massachusetts
185 Franklin Street, Room 1403
Boston, MA 02110

Re: D.T.E. 01-31-Phase II
Verizon Massachusetts' May 1, 2003 Compliance Filing

Dear Mr. Beausejour:

On April 11, 2003, the Department of Telecommunications and Energy ("Department") issued an Order concluding its two-year investigation into regulation of Verizon New England, Inc. d/b/a Verizon Massachusetts' ("Verizon" or "VZ") intrastate retail telecommunications services.¹ On May 1, 2003, Verizon filed with the Department an Alternative Regulation Plan ("Plan") and tariffs² implementing the Department's rulings in the Phase II Order. The Department requested comments from the parties in this proceeding on

¹ Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts, D.T.E. 01-31-Phase II (April 11, 2003) ("Phase II Order").

² Verizon's proposed revisions to tariffs M.D.T.E. No. 10 and M.D.T.E. No. 15 included in Verizon's May 1, 2003 Compliance Filing will become effective on June 1, 2003, unless suspended. See G.L. c. 159, § 19.

whether Verizon's Plan and tariff revisions are in compliance with the Department's Phase II conclusions. The parties' responses are summarized below.

I. AT&T Communications of New England, Inc. ("AT&T")

AT&T argues that Verizon's treatment of private line services in its Alternative Regulation Plan is not in compliance with the Department's directives in the Phase II Order (AT&T Comments at 2-3). Specifically, AT&T argues that although the Department concluded in the Phase II Order at 24 that the rates for Verizon's private line services must remain frozen until Verizon demonstrates sufficient competition for these services, Verizon proposes in its Plan, to restructure, re-price or reduce rates for private line services (id. at 2). AT&T argues that Verizon's proposal is an inappropriate attempt to smuggle pricing flexibility for its private line services through its compliance filing, and, as such, is clearly in violation of the Department's directive that these rates must remain frozen (id.). Thus, AT&T argues that the Department should reject this portion of Verizon's compliance filing (id. at 3).

II. Verizon

Verizon argues that AT&T's reading of the Phase II Order is overly restrictive and misapplies the Department's rulings in this case (VZ Reply Comments at 2). Verizon asserts that although the Department denied Verizon's request for upward pricing flexibility for private line services in the Phase I Order, and rejected Verizon's request for upward pricing flexibility of 15 percent per year in the Phase II Order, Verizon's current proposal for regulatory treatment of its private line services fully satisfies the Department's concerns by eliminating Verizon's ability to raise private line rates, but does allow Verizon to reduce those rates (id. at 3). In addition, Verizon argues that AT&T's restrictive reading of the Department's Phase II Order makes no sense and would only operate to harm consumers without any corresponding benefit to competitors (id.). Verizon argues that there is no discernible public policy reason for denying Verizon the ability to reduce retail private line rates if those rates are above the applicable price floor (id. at 3-4).

III. Analysis and Findings

We agree with AT&T that Verizon's provisions relating to regulatory treatment of private line services in its Alternative Regulation Plan are not in compliance with our conclusions in the Phase II Order. Verizon proposes that "Private Line services can be restructured and repriced within the overall pricing restriction" (May 1, 2003 Compliance Filing, Tab A at 2, ¶ G). However, we stated:

Our Phase I Order³ contemplated that unless special access rates were reduced to UNE levels, there would be no pricing flexibility

³ In May 2002, the Department issued an Order in the first phase of our investigation in this docket, in which the Department concluded that Verizon had successfully demonstrated the presence of sufficient competition to warrant pricing flexibility for the majority of its retail business services. See Verizon Massachusetts, D.T.E. 01-31-Phase I, at 91 (May 8, 2002) ("Phase I Order").

for private line services, and having denied pricing flexibility for Verizon's private line services, Verizon's rates for private line services will remain *frozen* until Verizon makes a showing of sufficient competition.

Phase II Order at 24 (emphasis added). The Department's language was clear. Therefore, consistent with our Phase II conclusions, the rates for Verizon's private line services must remain frozen until Verizon proves there is sufficient competition for these services. Verizon is directed to revise its Plan accordingly.

IV. ORDER

In conclusion, we direct Verizon to file a revised Alternative Regulation Plan that is consistent with our determinations herein.⁴ The filing is due within three (3) days of this Letter Order.

By Order of the Department,

_____/s/_____
Paul B. Vasington, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner

cc: D.T.E. 01-31-Phase II service list

⁴ We determine that the proposed tariff revisions included in Verizon's May 1, 2003 Compliance Filing do not include Verizon's pricing of private line services, therefore, the proposed tariff revisions are in compliance with our directives in the Phase II Order and no changes to the proposed tariffs are necessary. Therefore, we will allow the proposed tariffs and associated rate changes to take effect on June 1, 2003, as scheduled.